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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**  
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7 In Re The Complaint Of WATERCRAFT  
8 ADVENTURES RENTALS, LLC, as  
9 Owner of the YAMAHA JET SKI bearing  
Hull ID Number YAMA2000G506, for the  
Exoneration From or Limitation of  
Liability,

10 Petitioner,  
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12 WATERCRAFT ADVENTURE  
RENTALS, LLC,

13 Plaintiff,  
14

15 v.

16 DANIEL R. STICKEL AND AURORA  
GLASSOCK, *et al.*,

17 Defendants.  
18

Case No. 2:07-CV-01494-KJD-GWF

**ORDER**

19 Presently before the Court is Petitioner/Plaintiff Watercraft Adventure Rentals, LLC's  
20 Motion for Relief (#41). Defendant Daniel Stickel filed an opposition (#42) to which Plaintiff  
21 replied (#44/45).

22 **I. Background**

23 Plaintiff Watercraft Adventure Rentals, LLC ("Watercraft") owns and rents jet skis. In July  
24 2006, Watercraft rented a jet ski to Aurora Glassock ("Glassock"), who crashed the ski into a boat  
25 driven by Stickel, injuring Stickel. On May 1, 2007, Stickel brought suit against Glassock and  
26 Watercraft in Nevada State Court. Stickel served the summons and complaint on Watercraft's

1 resident agent, Connie Paulino, on May 5, 2007. Service was effected in accordance with Nevada  
2 Revised Statute § 14.090 by leaving copies of the summons and complaint with the gate guard who  
3 would not grant access to Paulino's residence. Watercraft was also served with the summons and  
4 complaint of Glasscock's cross-claim on June 10, 2007 through resident agent, Connie Paulino.  
5 Watercraft claims that this service was the first notice it had of the Stickel's claim against it.

6 The present action to limit liability was filed on November 9, 2007. At a hearing held on  
7 February 10, 2009, the Court was informed by Stickel's attorney that Plaintiff had been served on  
8 May 5, 2007. Plaintiff was notified at the hearing by the Court that if it disagreed with that date  
9 notice should be filed the next day. After Plaintiff failed to note any disagreement with the service  
10 date, the Court entered an order on February 13, 2009 dismissing Petitioner's action for lack of  
11 subject matter jurisdiction, because the petition had not been filed within six months of receiving  
12 written notice of the claim as required by 46 U.S.C. § 30511. In order to meet the six month  
13 statutory requirement, Plaintiff had to file its action seeking to limit liability no later than November  
14 5, 2007.

15 Plaintiff has now filed the present Motion for Relief (#41) from the November 13, 2009  
16 Order (#40) arguing that counsel did not hear the Court order that disagreement with the service date  
17 should be filed the next day, and that Watercraft did not receive notice of the claim, i.e. was not  
18 served, until it was served the cross-claim on June 10, 2007.

## 19 II. Analysis

20 A motion to reconsider a final appealable order is appropriately brought under either Rule  
21 59(e) or Rule 60 (b) of the Federal Rules of Civil Procedure. See United States v. Martin, 226 F.3d  
22 1042, 1048 n.8 (9th Cir. 2000). Motions for reconsideration are committed to the discretion of the  
23 trial court. See School Dist. No. 1J. Mutlinomah County v. ACandS, Inc., 5 F.3d 1255, 1262 (9th  
24 Cir. 1993). Here, Petitioner seeks reconsideration under Rules 60(b)(1),(6).

25 Pursuant to Rule 60(b)(1),(6), reconsideration is appropriate only upon a showing of: (1)  
26 mistake, inadvertence, surprise, or excusable neglect; or (6) any other reason justifying relief from

1 the operation of the judgment. See Fed. R. Civ. P. 60(b). A party can obtain relief under Rule 60(b)  
 2 only upon an adequate showing of exceptional or extraordinary circumstances. See Maraziti v.  
 3 Thorpe, 52 F.3d 252, 254 (9th Cir. 1995). A Rule 60(b) motion must be filed within a reasonable  
 4 time, and for reason (1) not more than one year after the judgment, order, or proceeding was entered.  
 5 See Fed. R. Civ. P. 60(b). Errors of law are cognizable under Rule 60(b)(1). See Kingvision Pay-  
 6 Per-View Ltd. v, Lake Alice Bar, 168 F.3d 347, 350 (9th Cir. 1999). Also, Rule 60(b) allows a  
 7 district court judge to vacate a judgment on its own motion if after “mature judgment and re-reading  
 8 the record he [is] apprehensive that he had made a mistake.” Id. at 352. However, due process  
 9 requires the court to give notice and an opportunity to be heard before vacating a judgment on its  
 10 own motion. See id.

11 A motion for reconsideration should not merely present arguments previously raised; that is, a  
 12 motion for reconsideration is not a vehicle permitting the unsuccessful party to reiterate arguments  
 13 previously presented. See Maraziti, 52 F.3d at 255; Beentjes v. Placer County Air Pollution Control  
 14 District, 254 F. Supp.2d 1159, at 1161 (E.D. Cal. 2003); Khan v. Fasano, 194 F. Supp. 2d 1134,  
 15 1136 (S.D. Cal. 2001) (“A party cannot have relief under this rule merely because he or she is  
 16 unhappy with the judgment.”). “As a general rule, the Court does not consider evidence on a motion  
 17 for reconsideration if the evidence could have been provided before the decision was rendered  
 18 initially.” Arizona Civil Liberties Union v. Dunham, 112 F. Supp. 2d 927, 935 (D. Ariz. 2000)  
 19 (citing School Dist. No. 1J., 5 F.3d at 1263). In order for a party to demonstrate clear error, the  
 20 moving party’s arguments cannot be the same as those made earlier. See Glavor v. Shearson  
 21 Lehman Hutton, Inc., 879 F. Supp. 1028, 1033 (N.D. Cal. 1994). If a party simply inadvertently  
 22 failed to raise the arguments earlier, the arguments are deemed waived. See id. It is not an abuse of  
 23 discretion for a district court to decline to address an issue raised for the first time in a motion for  
 24 reconsideration. See 389 Orange Street Partners v. Arnold, 178 F.3d 656, 665 (9th Cir. 1999).

25 Assuming that mistake or inadvertence caused counsel to fail to inform the Court that  
 26 Petitioner disputed the date of service, the Court finds that Petitioner received notice of the claim as

1 required by statute on May 5, 2007. Petitioner argues that when service was effected by leaving  
2 copies of the summons and complaint with the gate guard, notice was not provided to the owner of  
3 the jet ski as required by the Limitation of Liability Act. Petitioner agrees that notice would be  
4 effective if the vessel's owner or resident agent were personally served with the summons and  
5 complaint. After discovering that the complaint to limit liability would be dismissed, both the  
6 resident agent, now Connie Paulino Jablonski, and Watercraft's CEO, Stan Jablonski, argue for the  
7 first time that they did not receive the summons and complaint served on May 5, 2007.

8 Attacks on jurisdiction can be either facial, confining the inquiry to allegations in the  
9 complaint, or factual as in this case, permitting the court to look beyond the complaint. See White v.  
10 Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). When jurisdiction has been challenged, the party asserting  
11 jurisdiction must furnish affidavits or other evidence necessary to satisfy its burden of establishing  
12 subject matter jurisdiction. St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989); see also,  
13 Wepfer v. Marine, Inc., 344 F. Supp.2d 1120 (W.D. Tenn. 2004). Here the Court finds that  
14 Petitioner has not met its burden in establishing jurisdiction.

15 The Court finds the assertions that the summons and complaint served May 5, 2007 was  
16 received by neither the resident agent nor Watercraft's CEO not credible. On July 2, 2007, Stickel  
17 first claimed in a state court filing that service was accomplished on May 5, 2007 by serving the gate  
18 guard. The first time that Watercraft denied that service had been made on May 5, 2007 was not  
19 until after the Court dismissed the action to limit liability on February 13, 2009. Furthermore, the  
20 Court finds that the unexplained discrepancy between Petitioner's claim that the June 10, 2007  
21 service of the cross-claim was the first notice it received of Stickel's claim and the fact that it  
22 answered Stickel's complaint separately and eight days before it answered Glassock's cross-claim as  
23 further evidence that the June 10 service date was not the first notice Petitioner had of the claim.

24 Additionally, the Court finds that even if Watercraft or Watercraft's resident agent had not  
25 received *actual* notice of the claim, because the summons and complaint were not delivered by the  
26 gate guard to the resident agent, Watercraft clothed the gate guard with apparent authority to accept

1 notice by designating a resident agent that it knew lived in a gated community where access to the  
2 residence would be restricted. Nevada statute recognizes this potential disability to claimants by  
3 authorizing service of process by leaving a copy of the summons and complaint with the guard. See  
4 NRS § 14.090 (1)(a)(if there is a guard posted at the gate and the guard denies access, service is  
5 effective upon leaving a copy with the guard). Since there is no more definitive assertion of written  
6 notice of a claim than the filing of a lawsuit, service of the summons and complaint in accordance  
7 with federal and state law, in this case, notice was effective upon service. See Cincinnatti Gas &  
8 Electric Co. v. Abel, 533 F.2d 1001, 1005 (6th Cir. 1976)(any ambiguity in the Act should be  
9 resolved in favor of permitting full recoveries); Diamond v. Beutel, 247 F.2d 604, 607 (5th Cir.  
10 1957)(relying on Federal Rules of Civil Procedure, nothing prevents vessel owner from appointing  
11 agent to receive notice); In the matter of Waterfront License Corp., 231 F.R.D. 693, 698 (S.D. Fla.  
12 2005)(notice of a claim may be received by agent of vessel owner if agent has sufficient authority to  
13 receive notice).

### 14 III. Conclusion

15 Accordingly, IT IS HEREBY ORDERED that Petitioner/Plaintiff Watercraft Adventure  
16 Rentals, LLC's Motion for Relief (#41) is **DENIED**.

17 DATED this 23<sup>rd</sup> day of September 2009.

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21 Kent J. Dawson  
22 United States District Judge  
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